

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILMER B. GAY,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	
ROBERT D. SHANNON, et al.,	:	NO. 02-CV-4693
Defendants	:	

ORDER

AND NOW, this day of , 2004, it is ORDERED that the Motion to Stay
Discovery Pending Disposition of the Motion to Dismiss of Commonwealth defendants is
GRANTED.

BY THE COURT:

NORMA L. SHAPIRO, S.J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILMER B. GAY,	:	CIVIL ACTION
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	:	
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Defendants	:	

**MOTION TO STAY DISCOVERY PENDING
DISPOSITION OF THEIR MOTION TO DISMISS**

Commonwealth defendants move this Court, pursuant to Fed.R.Civ.P. 26(c), to stay discovery pending disposition of their motion to dismiss plaintiff's complaint, incorporate the attached memorandum of law, and state:

1. Plaintiff inmate Wilmer Gay, AF-2709, filed a *pro se* amended federal complaint on or about January 13, 2003.
2. Moving defendants are Commonwealth defendants Secretary Beard, Former Chief Grievance Coordinator James, Chief Hearing Examiner Bitner, Former Superintendent Vaughn, Superintendent Shannon, Deputy Superintendents Petruccia and Kneiss, Hearing Examiner Canino, Captains Brennan and Mooney, Lieutenant Wade, Sergeant Meyers, Corrections Officer McCusker, Ms. Dotter (retired), and Mr. Cudwadie. Non-moving defendant is William Fulmer, an inmate.
3. Gay alleges First, Eighth and Fourteenth Amendment Due Process rights violations pursuant to 42 U.S.C. §§ 1983, 1985(2), and 1986, as well as state law claims, for numerous allegations concerning the treatment of his personal/legal property, placement in restricted housing, and disposition of his grievances.
3. After the Commonwealth defendants filed their motion to dismiss, plaintiff made voluminous discovery requests.

4. The Commonwealth defendants' motion to dismiss is still pending before this Court.
5. Commonwealth defendants planned to file a motion to stay discovery pending the disposition of their motion to dismiss, but first requested plaintiff's consent to file the motion to stay.
6. Plaintiff declined to offer his consent to stay discovery and instead filed a Motion to Compel.
7. The grant of this motion, as to the Commonwealth defendants, will not prejudice plaintiff in any way.

WHEREFORE, the Commonwealth defendants pray for an order staying discovery pending disposition of their Motion to Dismiss.

GERALD J. PAPPERT
ATTORNEY GENERAL

BY: /s/ Patrick J. McMonagle
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Chief, Litigation Section

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v.	:	
ROBERT D. SHANNON, et al., Defendants	: :	NO. 02-CV-4693

**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF COMMONWEALTH
DEFENDANTS TO STAY OF DISCOVERY PENDING DISPOSITION OF ITS MOTION
TO DISMISS**

I. PROCEDURAL HISTORY

Plaintiff inmate Wilmer Gay, AF-2709, filed a *pro se* amended federal complaint on or about January 13, 2003. Moving defendants are Commonwealth defendants Secretary Beard, Former Chief Grievance Coordinator James, Chief Hearing Examiner Bitner, Former Superintendent Vaughn, Superintendent Shannon, Deputy Superintendents Petruccia and Kneiss, Hearing Examiner Canino, Captains Brennan and Mooney, Lieutenant Wade, Sergeant Meyers, Corrections Officer McCusker, Ms. Dotter (retired), and Mr. Cudwadie. Non-moving defendant is William Fulmer, an inmate.

Gay alleges First, Eighth and Fourteenth Amendment Due Process rights violations pursuant to 42 U.S.C. §§ 1983, 1985(2), and 1986, as well as state law claims, for numerous allegations concerning the treatment of his personal/legal property, placement in restricted housing, and disposition of his grievances. After the Commonwealth defendants filed their motion to dismiss, plaintiff made voluminous discovery requests.

The Commonwealth defendants' motion to dismiss is still pending before this Court. Commonwealth defendants planned to file a motion to stay discovery pending the disposition of their motion to dismiss, but first requested plaintiff's consent to file the motion to stay. Plaintiff

declined to offer his consent to stay discovery and instead filed a Motion to Compel.

Commonwealth defendants now respond to plaintiff's Motion to Compel by moving this Court to Stay Discovery pending the disposition of their Motion to Dismiss.

II. ARGUMENT

“In regard to [a] motion to stay discovery, courts are empowered under the Federal Rules of Civil Procedure to impose a stay of discovery on a showing of good cause.” *Minis v. Vaccaro, et al.*, Civil Action No. 02-1197 (E.D. Pa. 2002) citing *Weisman v. Mediq, Inc.*, Civil Action No. 95-1831, 1995 WL 273678 (E.D. Pa 1995) (citing Federal Rule of Civil Procedure 26(c)); *see also Coca-Cola Bottling Co. v. Grol*, Civil Action No. 92-7061, 1995 WL 421900 (E.D. Pa. 1993) (stating that decision to stay discovery is within the court's discretion). “While a court should not automatically stay discovery when a motion to dismiss is filed, a stay is proper where the likelihood that such a motion may result in narrowing or outright elimination of discovery outweighs the likely harm to be produced by the delay.” *Id.* Additionally, “[w]here a pending motion to dismiss may dispose of the entire action and where discovery is not needed to rule on such motion, the balance generally favors granting a motion to stay.” *Id.* (citing *Rae v. Union Bank*, 725 F.2d 478, 481 (9th Cir. 1984) (affirming district court's stay of discovery when pending motion may have disposed of the case).

This motion to stay discovery is not made with any dilatory intent and the grant of this motion, as to the Commonwealth defendants, will not prejudice plaintiff in any way. The discovery requests are voluminous. There are fourteen (14) Commonwealth defendants, some of whom are retired. The remaining Commonwealth defendants are employed at various corrections Institutions statewide. The Motion to Dismiss, if granted, will eliminate the need for any discovery. The Motion to Dismiss, if granted in part and denied in part, will narrow the

discovery. If this Motion to Stay is granted, it will not prejudice the plaintiff because any discovery requests that are relevant to the claims, if any, which remain after the disposition of the Motion to Dismiss will be responded to in a timely fashion.

III. CONCLUSION

This Court should grant the Commonwealth defendants' Motion to Stay Discovery.

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ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I, Patrick J. McMonagle, hereby certify that a true and correct copy of Commonwealth defendants' Motion to Stay Discovery Pending Disposition of the Motion to Dismiss was mailed on February 19, 2004, by first class mail, postage prepaid, to:

Wilmer Gay
Inmate AF 2709
State Correctional Institution - Huntingdon
1100 Pike Street
Huntingdon, PA 16654-1112

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ATTORNEY GENERAL

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